

1 would see that Peninsula did indeed subsequently request
2 waivers of those rules that were approved.

3 But as I said, this -- doing it this way is like
4 putting a 10-page letter into evidence, but only putting in
5 every other page because it omits the information on the
6 additional pages in the document, and that's true of this
7 file. This is a perfect example of that

8 It's true, it may be true they didn't request it
9 here, but they did request it at some point, and the
10 Commission even admits here that they approved the waiver.
11 So by putting this in, it's just an incomplete record. It
12 gives a false impression, and I don't know how we can find
13 findings on partial parts of files when subsequent parts of
14 the files explain what's been done.

15 JUDGE SIPPEL: Let me hear from Mr. Shook

16 MR. SHOOK: Your Honor, I think a certain amount
17 of what we are talking about here should be done outside the
18 presence of the witness, because I am going to end up
19 explaining certain theories here which may or may not have
20 an influence on the witness's testimony

21 JUDGE SIPPEL: Well --

22 MR. SHOOK: I would ask that he be excused for a
23 minute while we hash this out.

24 JUDGE SIPPEL: Well, let's see. All right, why
25 don't we do that. Why don't we -- we will excuse the

1 witness. You can do whatever the red badge permits you to
2 do, and why don't you check back with us in about five
3 minutes. Thank you, sir.

4 (Witness temporarily excused from witness stand.)

5 MR. SOUTHMAYD: What is going on out there?

6 MR. SHOOK: There is a protest of some kind.

7 MS. LANCASTER: See, we are right in front of
8 the -- we're not on the record, are we?

9 JUDGE SIPPEL: Yes, we are.

10 Now, while we are on the record --

11 MR. SHOOK: Now, let me try to explain.

12 JUDGE SIPPEL: I have just one question.

13 Are you giving this witness a half a loaf and
14 asking him about stuff that's not in that document?

15 MR. SHOOK: Your Honor, I have looked through
16 every single translator license file that I believe is
17 pertinent to this proceeding, that being seven that
18 Peninsula was ordered to turn off, plus the two Seward
19 translators.

20 On the basis of that review, I have pulled what I
21 believe to be relevant material. I understand that
22 Peninsula may look at that file and determine that other
23 material is also relevant, and we have now agreed upon a
24 procedure to get that additional material into the record.

25 On the basis of what I have seen to this point in

1 time, some of the files contain applications wherein
2 specific waiver requests were made of one kind or another.
3 We have gone over some of those applications. Some of the
4 applications request waivers of the power limits that were
5 imposed on translators. Some of the applications request
6 waivers of the ownership rules that would otherwise have
7 blocked the applications.

8 We just talked about the two applications for
9 Kodiak where no such waiver request was made when Peninsula
10 initially applied for or acquired the licenses for those
11 stations because it turned out that the ownership
12 restrictions didn't apply to Kodiak at that time.

13 In the case of Seward, the application that I have
14 found, the file that I have looked through, I didn't find a
15 waiver request by Peninsula either for the satellite
16 delivery system that it sought to **use**, or the ownership
17 restrictions that we would argue about whether or not they
18 applied.

19 When this application was filed in May of 1991,
20 but before grant in February of 1992, the new ownership
21 restrictions came kicked in. Those ownership restrictions
22 focused on whether there was a full power oral service in
23 the market at the time the application was *pending*.

24 In Seward, there was an **AM** station on the air.
25 That **AM** station, so far as I can tell, was never referenced

1 in any of the material that Peninsula submitted while those
2 applications were pending.

3 One of the things that the Commission determined
4 in 1998 was that the staff on its own incorrectly issued
5 waivers to Peninsula for the Seward stations. That
6 determination was based on the fact that there was an **AM**
7 station there.

8 JUDGE SIPPEL: All right. Well, where does that
9 get us? I mean, are you trying to say --

10 MR. SHOOK: I'm trying to find out --

11 JUDGE SIPPEL: Wait, let me ask the question.

12 So are you trying to say that the witness (a)
13 doesn't remember, or (b) he remembers and he is not telling
14 the truth, or (3) whatever reason there might be to be
15 asking these questions?

16 MR. SHOOK: All of this goes into the state of
17 mind of Peninsula in terms of why it believes it had a right
18 to continue to operate when the Commission told them to turn
19 off.

20 MR. SOUTHMAYD: If I could -- I'm sorry.

21 JUDGE SIPPEL: You go. Yes, okay.

22 MR. SHOOK: All of this background goes into the
23 state of mind. We **have Peninsula's statement as to** what was
24 in its mind -- *you* know, what was in Mr. Becker's mind. I'm
25 trying to bring out that there were other things that

1 existed that were also in his mind that he just didn't
2 happen to put in the statement.

3 JUDGE SIPPEL: Well, are you saying that these
4 things have to do with some kind of -- some element of
5 malice in his state of mind, or a disinterest, or just
6 unknowingness or forgetfulness?

7 You know, this line of questioning in and of
8 itself doesn't really go -- I'm not sure where it's going.

9 MR. SHOOK: The staff took various actions over
10 the years. Peninsula has made various representations, some
11 of which we haven't gotten to yet, and so there is an
12 element there that I will be able to tie some more of this
13 in to the information that I'm going to bring out
14 subsequent. I haven't gotten there yet.

15 JUDGE SIPPEL: We'll come out and get you.

16 MR. SHOOK: And there is the difference between
17 what the staff did and then what the Commission said in 1998
18 which was Seward -- the Seward waivers never should have
19 been granted in the first place, and that Peninsula had been
20 operating contrary to the translator rules for all of the
21 other translators since June 1 of 1994.

22 JUDGE SIPPEL: But if he's acting under good faith
23 belief that he has got the **waivers** --

24 MR. SHOOK: Well, that's --

25 JUDGE SIPPEL: -- how does it relate to the issue

1 in this case? That's all I am --

2 MR. SHOOK: Okay, I'm testing about some of that
3 good -- I'm testing some of that good faith belief.

4 MR. SOUTHMAYD: Could I -- could I --

5 JUDGE SIPPEL: Yes, sir.

6 MR. SOUTHMAYD: -- make a comment?

7 JUDGE SIPPEL: Yes, absolutely.

8 MR. SOUTHMAYD: First of all, this order I have
9 pointed to, it's not a staff order. It's a Commission
10 order. It's the Commission, not the staff, the full
11 Commission finding he had the appropriate waivers. So
12 you're not testing whether the staff action was correct.
13 This is the eighth floor, former eighth floor saying, yes,
14 he has the appropriate waiver.

15 Secondly, he's never been ordered to turn the
16 Seward translators off. There is beyond dispute that he has
17 every legal right to be operating them today, and he is. I
18 mean, these aren't even translators in issue about his
19 continuing operation. He is operating these today. He is
20 allowed to. There is no debate about the fact he has valid
21 licenses to operate them. So it has nothing to do with his
22 illegal operation of the Seward translators. It's perfectly
23 legal

24 I mean, I don't know where we are going, and he is
25 rebutting the Commission's own finding that these

1 translators have these fully granted waivers. I mean, I
2 just -- if it's a memory test, well --

3 JUDGE SIPPEL: Well, I don't go for memory tests,
4 certainly nothing back in 1991.

5 MR. SOUTHMAYD: Right.

6 JUDGE SIPPEL: But I am not particularly -- I'm
7 not too excited what I am hearing today, but I'm not going
8 to cut the Bureau off in terms of putting his case on. He's
9 got the burden

10 And I'll let you go, I'll let you continue on this
11 line as long as Mr. Southmayd has an opportunity to -- let
12 me just put it in a colloquial way -- to patch it up from
13 his standpoint. But it certainly is going to put him and
14 his client to a heck of a lot of trouble.

15 MR. SHOOK: Well, Your Honor, there isn't very
16 much more in the Seward area to cover, and you will note
17 that my questions are in reference to and in response to
18 what appears in the direct testimony relative to Seward.

19 JUDGE SIPPEL: Well, you know, as I say, I'm going
20 to let you finish this up, and I will very closely watch
21 these arguments and whatnot, but I am obviously very
22 impressed with what Mr. Southmayd pointed out, and there is
23 no question *that* in the course of -- this is 1934, that
24 there has been some mistakes made with respect to licenses.
25 I will accept that.

1 But to go -- and the issue in this case, the issue
2 in this case is quite clear with respect to operating
3 translators after the Commission had submitted -- had served
4 an order saying don't operate the translators. .

5 MR. SHOOK: From that standpoint, I am the first
6 to recognize, I will be the first to recognize that what we
7 are talking about here is on the fringes. The basic aspects
8 of what is going on are fairly clear in terms of the
9 Commission issued an order. Peninsula did or did not take
10 certain actions in response to that order. Peninsula had a
11 certain state of mind, and we are finding out what that
12 state of mind was.

13 JUDGE SIPPEL: Well, you have got two significant
14 factors here. One is that he said that if he didn't get a
15 stay on the injunction when he was going to District Court,
16 he would have shut down, number one.

17 Number two, he is telling us how he was acting
18 under waivers that he got. You know, whether it was by
19 mistake or what, that remains to be determined, I guess.

20 And three, the Commission in this order of 2001
21 said that -- the exceptions. I don't know how far that
22 goes. If you want to parse that out, refine it a little
23 bit, refine it a lot, you know, I am going to listen to it,
24 I'm going to try and follow as best I can.

25 But coming back to this, if this exhibit is going

1 to be offered, we're talking about the ones identified,
2 Exhibit 28, and you have other matter that is in these
3 public files that relate to this, in other words, saying it
4 another way, if this is an incomplete compilation of the
5 applications on which you are questioning this witness, I'm
6 not going to let it come into evidence. If there is more to
7 these applications, you are going to have to put them all
8 together, submit the whole package, and then let the witness
9 look at the whole package, and let the witness answer the
10 questions.

11 MR. SHOOK: Your Honor.

12 JUDGE SIPPEL: You see what I am saying?

13 MR. SHOOK: I understand.

14 JUDGE SIPPEL: Now, I know what you have done with
15 respect to the volumes of exhibits that were exchanged on
16 September 19th or September 12th, and you know, we have
17 already worked out a procedure for addressing that.

18 But as these things are coming in as we are
19 sitting here in the courtroom today, I want to be sure that
20 I have established that as a ground rule, that the witness
21 get the whole deck of cards when he is up there on the
22 stand, and if you don't have a complete -- you know, if you
23 say this is the best you can find, and *you* can't find
24 anything else, well, that's in category A.

25 But if you have other things that are back up in

1 your office that you didn't include in the package, that's
2 in category B, and I don't want this category B to go on any
3 further.

4 MR. SHOOK: Well, I understand. And what I can
5 tell you at this point is that when I looked through the
6 Seward file trying to find what materials were looked at by
7 the staff prior to its decision in February of '92, I was
8 able to find these two applications and nothing more.

9 If it turns out that there is something more, I
10 would apologize profusely and allow that any other such
11 material to come in, and any questions that needed to be
12 asked to clarify this situation developed.

13 With respect to applications or other material
14 that came in post-February 1992, in other words, after the
15 staff's grant was made --

16 JUDGE SIPPEL: Yes? Yes?

17 MR. SHOOK: -- if there is some relevance to that
18 material with respect to state of mind, certainly I wouldn't
19 object to that material coming in.

20 JUDGE SIPPEL: Well, I am accepting what you are
21 saying that you compiled this information on a good faith
22 basis, that you were not trying to hold anything back that
23 was relevant that might, you **know**, "sandbag" the witness. I
24 am not suggesting that that is happening, but I think that
25 it may be inadvertently it's happening, that this witness is

1 not being given the whole package together.

2 And I know from -- I mean, I would not want to sit
3 on a witness stand and testify to things that happened back
4 in '91 or '92 with respect to filings with a government
5 agency, and be given half of the things that I filed. I
6 mean, there is no way that -- this whole line of questioning
7 becomes useless if this thing has to be patched up to such a
8 degree that it's going to show that there were waivers asked
9 for down the road because he had made a mistake, and there
10 was correspondence in between. I mean, I can project all
11 kinds of scenarios that would make this to be a complete
12 waste of time if the purpose is, is to show a lack of
13 credibility on the part of this witness, to convey to us how
14 he was putting these packages together.

15 On the other hand, if -- you know, I am going
16 along with what you are saying. I think what you are trying
17 to say, you are trying to say that this **all** goes to his
18 frame of mind or his state of mind with respect to how he
19 was treating the Commission's order telling him to shut the
20 translators off. That's the state of mind.

21 And going back to what was going on in 1991 and
22 1992 in filings in light of how this is being developed at
23 this point as I'm hearing it today, I'm **not** so sure how you
24 are going to make the leap between that and what I say is
25 the ultimate issue in the case.

1 You're telling me that you are getting close to
2 the end on this. at least as far as Seward is concerned.

3 MR. SHOOK: Correct.

4 JUDGE SIPPEL: And we'll just take it one step at
5 a time and see how it goes

6 So let me ask you this question before we bring
7 the witness back in. Do you know -- up in your office do
8 you have anything more that relates to EB-28, or is this a
9 complete document as far as you could do, as far as you
10 could determine that it was a complete document?

11 MR. SHOOK: It's my understanding that EB-28
12 represents the two applications that were filed by Peninsula
13 to obtain new translator licenses for Seward.

14 JUDGE SIPPEL: How about amendments thereto?

15 MR. SHOOK: I did not locate any.

16 JUDGE SIPPEL: You were looking. Where you looked
17 though you would have found them had they been there in the
18 course of things?

19 MR. SHOOK: I'm afraid all of us have looked
20 through Commission license files at one time or another and
21 have come to the sad conclusion that there were materials
22 that should have been there that weren't there. And all I
23 can tell you is that looking through the license file I did
24 not see any amendments to these applications that were made
25 between May of 1991 and February of 1992 when the staff

1 granted the applications.

2 If such amendments exist, as I said before, I
3 apologize profusely, but I haven't found them.

4 JUDGE SIPPEL: No, you don't have to apologize if
5 nothing is there. But I am just trying to be sure that I
6 know what's going on here.

7 All right, now, where do we go from here?

8 MR. SOUTHMAYD: Would it be convenient to take our
9 break now?

10 JUDGE SIPPEL: Well, I want to do that, but before
11 we do that I want to see if I can give a little bit of
12 thought to where we are going to go when he comes back on
13 the stand.

14 At this juncture I'm going to permit you to
15 continue this questioning with respect to EB-28. But how
16 much more on the -- I mean, it's over -- I understand Mr.
17 Southmayd's objection, and he has a darn good objection, and
18 I'm doing this as a matter of discretion.

19 But let me -- where are you going to after that
20 in terms of -- I mean, are we going to go down the same road
21 with some other applications?

22 MR. SHOOK: I'm looking to see where I am going
23 with this.

24 (Pause)

25 MR. SHOOK: I have five questions that

1 specifically relate to Seward situation, and then I move on
2 to other matters.

3 JUDGE SIPPEL: All right. Well, we will finish
4 Seward, and of course, this is another one of these matters
5 that --

6 MR. SHOOK: Well, actually, no, there are more
7 than five. There is some others here.

8 JUDGE SIPPEL: Well, how much longer do you think
9 you are going to be on this? Fifteen minutes?

10 MR. SHOOK: Considering that most of my questions
11 are fairly discrete and call for yes/no answers, although we
12 haven't necessarily gotten ye/no answers.

13 JUDGE SIPPEL: Ask me what I did in 1991 and then
14 ask me to say yes or no to them, I mean, I -- I understand.

15 Look, it's 25 of 11. Why don't we come back at --
16 well, let's come back at five minutes of 11. And we will
17 pick up from where we are, but I am going to look very -- if
18 you go into this kind of material again in some other aspect
19 of this case, I want -- I am going to take a very hard look
20 at that because I think if you're trying -- I am not sure
21 exactly where you are going with this in terms of the state
22 of mind.

23 I mean, I had some ideas, *but* I **don't** want this to
24 go on ad infinitum with respect to what -- anyway, that's
25 the long and sort of it.

1 We are in recess until five minutes of 11 by that
2 clock in the back. Okay?

3 MR. SHOOK: Thank you.

4 JUDGE SIPPEL: Thank you. Go off the record

5 (Whereupon, a recess was taken.)

6 JUDGE SIPPEL: Okay, Mr. Becker, you are sti 1
7 under oath.

8 THE WITNESS: Yes, sir.

9 JUDGE SIPPEL: Are you satisfied with the
10 explanation as to what transpired in your absence or do you
11 want ask me anything about that?

12 THE WITNESS: My counsel advised me what took
13 place.

14 JUDGE SIPPEL: Okay. Mr. Shook.

15 BY MR. SHOOK:

16 Q Mr. Becker, I will have a few more questions about
17 this Seward situation and then I will move on to something
18 else. And the premise behind the questions that I am about
19 to ask is that the applications which have been marked for
20 identification as EB-28 are the applications upon which the
21 staff based its decision in February 1992 to grant these
22 applications.

23 A That's not in my binder. Is *this* it? Oh, I have
24 it.

25 Q Now, to your recollection, did Peninsula inform

1 the processing staff while the Seward applications were
2 pending that there was a commercial **AM** station in Seward?

3 A I don't recall.

4 Q Now when you received the staff's February 18,
5 1992, letter, which you have quoted in page 6 and 7 of your
6 testimony, so if you will just -- you can take a moment to
7 look at that.

8 A Tell me what you are referring to again, please.

9 Q Okay, I am referring to the staff's letter of
10 February 18, 1992, which you quote on PCI Exhibit 1 on pages
11 6 and 7.

12 A I see it. Yes.

13 Q When you received the staff's letter, didn't you
14 know that contrary to the statements in the letter Peninsula
15 had not requested waivers of either 74.1231(b) or 74.1232(d)
16 of the rules?

17 A My recollection is we sought a Wrangell waiver
18 exception, which was broadly applied to Alaska, and my
19 recollection is that I don't recall specifically asking for
20 waivers of those sections of the rule.

21 The application is -- I want to make clear of what
22 was there, so no

23 Q Now moving on to page 7 of your testimony, after
24 the Commission's letter, the first sentence of that next
25 paragraph is rather long, and it begins with, "Therefore,

1 the PCI proceeded..., " and it concludes with, "...one day be
2 subject to revocation."

3 Do you see that sentence?

4 A Yes.

5 Q Now I would like to direct your attention to EB
6 Exhibit 4, pages 31 and 32.

7 JUDGE SIPPEL: I'm sorry. Would you repeat your
8 reference again?

9 MR. SHOOK: EB-4.

10 JUDGE SIPPEL: EB-4.

11 MR. SHOOK: Pages 31 and 32.

12 JUDGE SIPPEL: Thank you.

13 BY MR. SHOOK:

14 Q Have you found those documents?

15 A Yes. Yes, I believe so. Those licenses?

16 Q Right.

17 A Okay.

18 Q Do you know what they are?

19 A Yes.

20 Q And they are what?

21 A FM broadcast translator booster station license
22 for K272DG, Seward, Alaska, and K285EG, Seward, Alaska.

23 Q So these are the -- these would be the licenses
24 that you had received from the Commission following the
25 applications that we just looked at, EB-28?

1 A I believe that's correct.

2 Q Now this is language which I believe appears in
3 virtually ever licensing document the Commission issues, but
4 I want you to focus on the very small print at the top of 31
5 and the top of 32 that begins, "Subject to the
6 provisions..."

7 A Yes.

8 Q Do you see that?

9 A Yes.

10 Q The license is subject to a number of things: the
11 act, subsequent acts, treaties, regulations, heretofore or
12 hereafter made by the Commission.

13 Do you see that?

14 A I do.

15 Q Now that's language that so far as I know has
16 appeared in virtually every single licensing document this
17 agency has issued for quite some time.

18 In light of that, would you still stand by your
19 statement that the FCC gave you no indication that the
20 waivers could some day be subject to revocation?

21 A That reference was made to footnote 59 which did
22 not make -- in that report and order did not make, it was an
23 Alaska exception. It did not indicate any need to reapply
24 for Wrangell Group waivers, **or** that we had to go back and
25 re-seek waivers that were granted under Wrangell.

1 So my understanding was that we were exempt,
2 Alaska exemption. This can apply to anyone who has a
3 license. Somewhere down the road something can happen. But
4 as far as my testimony goes here, my frame of mind here is
5 regard to the Alaska exception, and in particular, footnote
6 59, which spells it out that none of our actions herein --
7 none of our decisions herein will alter in any fashion the
8 special treatment we accord Alaska.

9 And so as far as my state of mind goes, I am good
10 to go. I have got Alaska exception. Even with the change
11 in the rules, they specifically noted that Alaska was exempt
12 from all the changes because they said plural, "our
13 decisions herein," and so that's my understanding.

14 I mean, the Commission ultimately could through a
15 316 procedure modify my licenses as they can do. You know,
16 that's the provision for modifying. But then I would have
17 an opportunity to object. And according to that procedure
18 then, we would be fairly offered a chance to object to any
19 changes that were made. But you know, I understand where
20 you are headed here.

21 Q Let's go on to page 8 of your testimony. Focusing
22 on the second paragraph of page 8 with respect to the 1995
23 renewal applications for the translators, I **believe** this had
24 come up early on when I was -- when I had lodged an
25 objection to some of the testimony.

1 But there was a reference to changes in staff, and
2 you had mentioned a Mr. English. Were there any other staff
3 changes that you have now come to recall other than Mr.
4 English not being there any more?

5 A Well, it's my understanding Allen Snyder is still
6 with the Bureau, and he did send a number of the letters.
7 However, it's my understanding that Larry Eads has left the
8 Bureau and he was -- it was my understanding -- Allen
9 Snyder's boss. And most of this Wrangell exceptions, I
10 think, were granted under Mr. Eads who I believe is no
11 longer with the Commission.

12 Q Now in the middle of the second paragraph on page
13 8, there is a statement, "PCI was singled out to come into
14 compliance as a result of a competitor's petition to deny,
15 seeking the denial of PCI's routinely filed 1995 license
16 renewals."

17 A I see that.

18 Q You would agree with me, wouldn't you, that there
19 was --. Now you reference your 1995 renewal applications,
20 and the question that I have at this point is, did Peninsula
21 maintain in its 1995 renewal applications for its other area
22 translators, that meaning the Homer, Anchor Point, Kachemak
23 City, the seven, in addition to Seward, so those nine
24 translators, did Peninsula maintain in those 1995 renewal
25 applications that footnote 59 of the report and order

1 specifically exempted Peninsula from compliance with the
2 revised translator rules?

3 And before you answer that question, I'm going
4 to -- we're going to go through and look at the various
5 applications. So the first one I would like you look at
6 appears at EB Exhibit 3, pages 8 through 15.

7 JUDGE SIPPEL: Will you go over the pages again?
8 Eight?

9 MR. SHOOK: Eight through 15.

10 MR. SOUTHMAYD: Your Honor, if I could be heard?

11 JUDGE SIPPEL: Certainly.

12 MR. SOUTHMAYD: I think we could, subject to
13 check, but I think all of the applications are identical for
14 each of the translators.

15 MR. SHOOK: I believe that is so

16 MR. SOUTHMAYD: And we would be willing to
17 stipulate that that's the case if it would help go through
18 one as opposed to going through all of them.

19 MR. SHOOK: That would be fine.

20 JUDGE SIPPEL: Thank you very much, Mr. Southmayd.
21 Great idea.

22 MR. SHOOK: Although because of the questions that
23 I have, there *may be one or two that we do have to look at.*

24 BY MR. SHOOK:

25 Q With that in mind, with that stipulation in mind,

1 if you would just --

2 JUDGE SIPPEL: Let's ask the witness. Do you
3 understand what just transpired there?

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: What you say to one applies to all.

6 BY MR. SHOOK:

7 Q So that the record is clear you understand that
8 what we are focusing on at this point is if you could relate
9 to us your understanding of what application you are looking
10 at.

11 A Well, you referred me to Exhibit 3, starting with
12 page 8.

13 Q Correct. Through page 15.

14 A Yes, I see it.

15 Q Now would you agree with me that what you are
16 looking at is the license renewal application for Station
17 K272C at Homer, Alaska?

18 That reference appears on page 10 of the exhibit.

19 A I see that.

20 Q If you go to page 12 of the exhibit, if you look
21 at question number five, and you would agree with me,
22 wouldn't you, that Peninsula has checked "yes" to the boxes,
23 "yes" for questions 5(a) and 5(b)?

24 A 5(a), yes; 5(b), yes. Yes.

25 Q And that there is an explanation that appears as

1 Exhibit No. 1 for support or to explain the "yes" responses?

2 A Yes.

3 Q And that exhibit appears at page 15?

4 A Yes.

5 Q And the explanation that is given is that in
6 approving the original construction permit and license for
7 this translator the Commission had granted a request by
8 Peninsula for a waiver of Sections 74.1232(d) and (e) of the
9 rules?

10 A Well, I see that's what it says, yes.

11 Q And if we go to page 39 of Exhibit EB-3, which as
12 we have earlier established is the construction permit
13 application for the Homer translator, we can see that there
14 was in fact a request for a waiver of Section 74.1232(d).

15 A I see that.

16 Q So that the representation made in the EB-3
17 application for renewal filed by Peninsula in 1995 for Homer
18 is accurate, correct?

19 A To the best of my knowledge, it looks correct.

20 Q Now if we go to EB Exhibit 4, the 1995 renewal
21 application for that particular facility appears at pages 36
22 through 41.

23 A I see it.

24 Q Do you see that?

25 A Yes.

1 Q And you see also that with respect to questions
2 5(a) and 5(b), which appear on page 40, the "yes" box is
3 checked for both, and there is an Exhibit 1 that is
4 referenced as an explanation for the answers

5 A Yes.

6 Q And if you go to page 41 of EB-4, you will see
7 that the explanation is identical to the explanation that
8 had been given for the Homer translator.

9 A Yes.

10 Q And this is now the Kodiak 274AB translator.

11 A Yes.

12 Q And you do recall though, don't you, that we have
13 previously established that when Peninsula first applied for
14 the Kodiak translators, it had made no such request because
15 it wasn't even necessary?

16 A Yes.

17 Q so could you explain to us how it is that there is
18 this reliance on a waiver request for 74.1232(d) when no
19 such request had in fact had been made?

20 A It appears to be a blanket exhibit that was
21 prepared for all the translators, and it looks to me like
22 it's an oversight. The same exhibit appears in all my
23 translators. We were in the renewal mode, we were **checking**
24 all the -- essentially as the counsel has said, they were
25 all identical and put it in. So it appears to be actually

1 an error at this point.

2 Q And the same error would also apply with respect
3 to the other Kodiak translator, because that one was --

4 A Yes.

5 Q -- acquired from the Kodiak church by way of
6 assignment?

7 A Yes.

8 Q And there was no such request for 74.1232(d)
9 waiver?

10 A Yeah, that is correct.

11 Q Now moving on in that -- in your testimony, which
12 is PCI Exhibit 1, and we're still on page 8. The second to
13 the last sentence references PCI's doubts at this point that
14 it could ever find a willing buyer for its translators.

15 Do you see that?

16 A Yes, I do.

17 Q Now within the last two years you have in fact
18 sold at least one translator to a different entity, have you
19 not?

20 A I did.

21 Q Would I be correct that it cost approximately as
22 much to put that translator up as it had to put up the other
23 nine that are referenced throughout this proceeding?

24 A Well, the cost of what -- what it cost to build
25 that translator and what it **sold** for were two different

1 things.

2 Q Okay, approximately what did it cost to build that
3 translator?

4 A That translator would, I think, be roughly \$5,000.

5 Q To build?

6 A To build.

7 Q And that was sold for \$1,000, wasn't it?

8 A Yes.

9 MR. SOUTHMAYD: Excuse me, Your Honor.

10 Would it be useful to identify the translator for
11 the record so we know which one we are talking about?

12 JUDGE SIPPEL: Yes.

13 MR. SHOOK: The translator we're talking about was
14 licensed to serve --

15 THE WITNESS: Soldotna.

16 MR. SHOOK: -- Soldotna

17 BY MR. SHOOK:

18 Q And the translator itself was Located in Homer?

19 A Homer.

20 Q And its currently **at** the same site as it was when
21 Peninsula built it?

22 A Yes.

23 Q Is there a landlord/tenant relationship now
24 between Peninsula and Turquoise?

25 A There is.

1 Q The licensee of that translator now?

2 A Yes.

3 Q And does Turquoise pay Peninsula a monthly rental
4 to occupy that location?

5 A Yes.

6 Q Do you have any involvement whatsoever in the
7 operation of that translator?

8 A Only from a technical standpoint. The translator
9 is connected to a computer which is hooked up to the
10 internet, and we occasionally have power points that crash
11 the computer even though it's on a UPS. It still does
12 strange things. And once in awhile have to restart it and
13 get the thing back online because it's dead. But that's
14 been the limit of anything I have done for that station.

15 Q And this is a translator that retransmits KXBA,
16 correct?

17 A Yes.

18 Q Now when Peninsula held the license for that
19 translator, it translated KWVV-MS though, didn't it?

20 A Yes.

21 Q How did it come about that the Soldotna translator
22 changed the primary station from KWW-FM to KXBA?

23 A Once you sell a translator, the person who
24 purchases it is free to translate any station they want to
25 translate. I no longer have any influence on that

1 translator. He could translate John Davis stations if he
2 wanted to. I had no say in it. So you will have to ask Mr.
3 Rhodes who owns the translator what his decision was, but I
4 have no influence on it.

5 Q The sequence of events though as you recall it
6 would be he has to have your -- he has to have Peninsula's
7 permission though, doesn't he?

8 A To rebroadcast, that's correct.

9 Q And so he sought Peninsula's permission?

10 A Yes, and I gave it to him.

11 Q Is there any fee that is charged by Peninsula for
12 the rebroadcast of KXBA?

13 A No.

14 Q Does Turquoise pay for its electrical usage to --

15 A It does, yes. They pay for space and power.

16 Q Now not focusing on the rental charge but in terms
17 of the money that Turquoise pays you, pays Peninsula on a
18 monthly basis, can you break out from that what is charged
19 for electricity?

20 A Yes. I think I disclosed in your request for
21 production of documents, I disclosed the Turquoise lease, and
22 if my memory is correct, I indicated in there they paid us
23 \$75 a month for the antenna rental to mount their antenna on
24 my tower, and I believe I indicated \$75 a month for the
25 electricity part of the bill. And so the total is \$150 a

1 month, and that's what they are currently paying.

2 Q I would like to move on to page 9 of your
3 testimony. Now in the first sentence, take a look at the
4 first sentence of page 9, first paragraph.

5 A I see it.

6 Q Now wouldn't it be fair to state that you knew
7 that as a consequence of the Commission's 1998 memorandum,
8 opinion and order, and that's an official notice Exhibit 11,
9 that the Commission was telling you in 1998 that the Seward
10 waivers could possibly be terminated?

11 A They indicated that there was a possibility of
12 that in the 1998 order, yes. But we have no knowledge of
13 when that would happen.

14 Q Now moving on to the third paragraph of your
15 testimony, the middle of it when you reference a section
16 called 316(g), did you mean 312(g)?

17 A That is a typo. That should be 312(g). Thank
18 you.

19 Q Moving on to the last sentence on page 9, is the
20 WBIS decision the only precedent upon which you relied to
21 support your argument as to how 312(g) applies in the
22 circumstances facing Peninsula?

23 A To my knowledge, the WBIS case is -- there are
24 other cases, I believe, but I think that's the most recent
25 one that I saw an order about. So there may be others, but

1 this one was sufficient to prove my point.

2 Q Moving to page 10 of your testimony, now you
3 relate that Peninsula believes, and you have stated this a
4 number of times, that Section 307(c)(3) of the act and
5 Section 1.62 of the rules authorizes Peninsula's continued
6 operation of the translators.

7 Now you recognize, don't you, that the Ninth
8 Circuit Court of Appeals did not agree with that argument?
9 And for that I would refer you to official notice Exhibit
10 17, page 12.

11 A I have it.

12 Q You will note that in two of the three -- the two
13 paragraphs that appear there completely on page 12, that the
14 court addresses the impact of 1.62.

15 A Yeah, the court does. Yes.

16 Q And the court disagrees with your argument?

17 A The court did, and we debated, actually had
18 serious discussions with Mr. Jacobus about filing an appeal
19 on that basis, but it would have meant going to the Supreme
20 Court and no appeal is with it. So we don't agree with that
21 assessment.

22 Q Moving on to page 11 of your testimony, the
23 reference to "maintaining a clean record," there **is** one
24 other aspect which I want to ask you about, and that is how
25 you identified Station KWW-FM for purposes **of** station

1 identification.

2 A KWW-FM, Homer, Kenai, Soldotna, Seward and
3 Kodiak.

4 Q The frequency?

5 A No, it's not required. All you -- to my
6 understanding of the rules, the only thing that is required
7 is your city license, that your call letters immediately
8 followed by your city license. And KWW-FM, Homer complies
9 with the requirements of the ID. And you are free to add
10 additional communities as is common everywhere in
11 broadcasting after you cite your primary city first in the
12 order in which you give your ID.

13 Q And the frequency identification?

14 A Frequency is immaterial. You can add it or not.
15 It doesn't make any difference. It's not a requirement of a
16 legal ID to put in your frequency.

17 Q When the frequency was identified though, wasn't
18 it identified as 104.9?

19 A We promoted -- we consider that a promotion for
20 our dial position. And because in most places -- well, I
21 would say virtually everywhere that we have a signal we are
22 on 104.9.

23 Q But you would agree that the license frequency for
24 KWW-FM is 103.5?

25 A It is 103.5. Yes, that is correct.

1 MR. SHOOK: Your Honor, I am almost finished. I
2 want to clean up a couple of matters that were left over
3 from yesterday.

4 JUDGE SIPPEL: Very well.

5 BY MR. SHOOK:

6 Q Mr. Becker, this concerns the main studio in
7 Kenai/Soldotna area --

8 A Yes.

9 Q -- where KPEN and KXPA. Has Peninsula ever
10 broadcast live from the Kenai studio?

11 A No.

12 Q And yesterday I recall that you testified that
13 Peninsula had three local telephone lines that pertained to
14 the Kenai studio. Do you remember that?

15 A Yes.

16 Q Is one of those numbers a general station number?
17 In other words, if an individual wanted to call the KPEN
18 studio and looked up in the local telephone book a number,
19 what number or numbers would be listed?

20 A The listing in the phone book shows 262-6000 as a
21 primary number, followed by the sales office numbers which
22 is co-located in the studio, at 283-8706, and 283-8423.

23 Q The main number that you are referring to, is that
24 the one that hooks up with Homer?

25 A Yes.

1 Q Does Peninsula maintain any local telephone
2 numbers in either Seward or Kodiak?

3 A Yes.

4 Q And those phone numbers, in turn, hook up directly
5 with Homer?

6 A Yes.

7 Can I correct an answer?

8 Q Sure.

9 A On the issue of broadcasting live from KPEN.

10 Q Right.

11 A We broadcast live, I'm just thinking back through
12 my cobwebs here. When we first went on the air with KPEN,
13 which would be roughly 1994 --

14 Q You mean 1984?

15 A 1984, yes.

16 We had live programming originating from KPEN for
17 approximately eight months, and I had a full-time person who
18 lived at the studio there and was my morning person, and he
19 originated a local morning show, and it was kind of an easy
20 listening format at that point, but yes, we did broadcast.

21 Q And then no such broadcasts after the eight months
22 that you just referred to?

23 A Aside from testing on-air capability to test that
24 we, and I have done that, we can originate programming, not
25 on a regular basis.

1 Q When was the last such test that you did?

2 A I don't recall.

3 Q Within the last five years?

4 A Yes.

5 Q Within the last three years?

6 A Yes.

7 Q Within the last year?

8 A No.

9 Q Now, Mr. Becker, what I am about to go through is
10 in the nature of some housekeeping, and I want you to look
11 at Exhibit EB-1.

12 A I have it.

13 Q You see that it's the Enforcement Bureau's request
14 for admission of facts and genuineness of documents?

15 A Yes.

16 Q And would it be the case that EB-2 represents
17 Peninsula's answers to those admissions request?

18 A Yes.

19 Q And that the signature that appears at EB-2, page
20 13, is your signature?

21 A Yes.

22 Q I want you to turn to EB-16.

23 A I don't see that. Oh, 16. I have it.

24 Q Did Mr. Buchanan ever bring this document to your
25 attention, this three-page letter from the Bank of America

1 addressed to him?

2 A I don't recall.

3 Q Turning to EB-17, it's a one-page letter from the
4 Bank of America to Mr. Buchanan.

5 A I see it. Yes.

6 Q Did Mr. Buchanan ever bring this letter to your
7 attention?

8 A I don't recall.

9 Q Did Mr. Buchanan ever tell you that the Bank of
10 America could not proceed or was unable to proceed with the
11 loan that he had sought?

12 A He told me that. I don't think I saw the letter,
13 but he -- my understanding was the bank, which was part of
14 an SBA application is what he told me, was -- the SBA part
15 of the loan was contingent upon getting the consummation
16 assignment approved. They couldn't go any further until
17 consent was approved is what Mr. Buchanan told me. And he
18 was hung up waiting for the consent to the assignment.

19 He waited a year, and then he said, well, my
20 funding with the bank has expired because the SBA
21 requirement that he do something within a one-year time
22 period.

23 I don't think I saw **the letter** but I **think he** told
24 me that basically he would have to start over again is what
25 he told me.

1 Q Do you have any understanding as to whether or not
2 he in fact started over again?

3 A I think Mr. Buchanan was waiting for something
4 from the FCC before he went through the process again,
5 because he went through a -- he told me he went through an
6 extensive process to get an SBA loan, it's a very extensive
7 process to get approved for an SBA loan. You have to do a
8 lot of stuff, jump through a lot of hoops. And he wasn't
9 going to do that again until he had a consent in his hand
10 before -- you know, so he know he could proceed. Then he
11 would have to, you know, have a reason to reinstitute this
12 whole mess.

13 Q And speaking of consent, wasn't such consent in
14 fact given in official notice Exhibit 11?

15 A Yeah, this -- this notice consented, but it also
16 killed the deal. Although the FCC consented to the
17 assignment, they placed conditions in here which squashed
18 the deal because they modified -- they threatened in this
19 order to modify our Seward authorizations by removing the
20 waivers and they refused to grant the waivers were had asked
21 for Kodiak to restore service.

22 So even though they consented to the assignment,
23 only four of the translators -- only five of the translators
24 were worth buying. So it was more than just a consent. You
25 had to have the whole nine because the purchase agreement

1 said that there couldn't be anything pending which would
2 threaten these authorizations, and we couldn't consummate it
3 because of this order.

4 Q You weren't precluded from redoing your agreement,
5 were you?

6 A Well, that wasn't our agreement, no. We could
7 have changed it, but we didn't want to. We wanted to sell
8 all nine translators. He wanted to buy all nine
9 translators.

10 JUDGE SIPPEL: This was a package deal for nine?

11 THE WITNESS: Yes. Yeah, that was the agreement.
12 I sold him all nine.

13 JUDGE SIPPEL: And how many did the Commission
14 accept from the nine?

15 THE WITNESS: Four.

16 JUDGE SIPPEL: And what was the reason?

17 THE WITNESS: Well, two of them involved a waiver
18 request for Kodiak to restore service to Kodiak, which they
19 refused to grant. And then they hung out this treat over
20 the Seward translators, that they would go away, and that
21 was the basis of our petition for reconsideration.

22 JUDGE SIPPEL: What would go away?

23 THE WITNESS: The waivers, the waivers, the
24 Wrangell waivers for the Seward translators make those
25 translators work. And by removing the waivers, the

1 translators are effectively worthless.

2 JUDGE SIPPEL: So in other words, revoking the
3 waivers?

4 THE WITNESS: Yes

5 JUDGE SIPPEL: would that be fair, revoking them
6 or taking them back or declaring them void?

7 MR. SHOOK: You could probably phrase it one of
8 two ways at least. One being revoking the waiver, and the
9 second way would be modifying the license. But the effect
10 would be the same no matter what you called it.

11 JUDGE SIPPEL: All right. Now what I've got here
12 on this Exhibit 11 shows how many? One, two, three, four,
13 five, it looks like six.

14 THE WITNESS: Oh, on Exhibit 11? Yes, that's
15 because three of the translators were never contested. The
16 Anchor Point, Soldotna, Kachemak City, the Homer translators
17 have never been an issue as far as petitions to deny.

18 JUDGE SIPPEL: All right. So three were okay, and
19 would those three be part of the nine that --

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: So then you've got six here to
22 contend with.

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: And of the six, you say four -

25 THE WITNESS: Four of the six.

1 JUDGE SIPPEL: Four of the six were not allowed?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: And then there were two that there
4 was a cloud hanging over it?

5 THE WITNESS: The Seward translators, those were
6 the two that had the cloud. The two Kodiak translators were
7 inoperable because we had no way to feed them a signal. And
8 the two remaining ones, the only two that were viable here
9 were the two stations in Kenai/Soldotna.

10 So four out of these six were essentially
11 crippled.

12 JUDGE SIPPEL: What was wrong with the Seward?
13 That's where they might revoke the --

14 THE WITNESS: Yes, they threatened to -- they
15 signaled in this order they were -- as soon as the Seward
16 station came on the air, that they would decide whether or
17 not to remove our waivers of alternate signal delivery.

18 JUDGE SIPPEL: I see. So the Kenai/Soldotna were
19 okay.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: The Kodiaks were inoperable?

22 THE WITNESS: Yes

23 JUDGE SIPPEL: For technical reasons?

24 THE WITNESS: Yes.

25 JUDGE SIPPEL: And then you thought the Commission

1 was -- okay, I put the cloud over Sowards.

2 THE WITNESS: That's correct.

3 JUDGE SIPPEL: And that chilled the deal?

4 THE WITNESS: Absolutely.

5 JUDGE SIPPEL: Okay. Well, I understand. I just
6 wanted to get a scorecard.

7 BY MR. SHOOK:

8 Q To clarify the explain that you gave to the judge,
9 in terms of the Kodiak translators being inoperable, by that
10 don't you mean that they weren't operable only to the extent
11 that they could not receive Peninsula's programming?

12 A That is correct.

13 Q They could otherwise operate. They would simply
14 have to use a different primary station?

15 A That is correct.

16 JUDGE SIPPEL: Could not receive whose
17 programming?

18 THE WITNESS: They couldn't receive my
19 programming.

20 JUDGE SIPPEL: Where, where? Where do you have a
21 place?

22 THE WITNESS: Homer.

23 JUDGE SIPPEL: Homer, okay.

24 THE WITNESS: And Kenai/Soldotna.

25 JUDGE SIPPEL: I'm trying to follow this with a